



1 To the honorable W. S. K. Morrison Judge of the
2 Circuit Court of Lee County Virginia.
3 Humbly. Complaining your oratrix Susan A. Ely
4 formerly Susan A. Wise and widow of Jesse S
5 Wise deceased, would respectfully represent and
6 shew unto your honor, that her late husband, the
7 said Jesse S. Wise deceased, departed this life
8 intestate, in this County, on the 11th day of February
9 1892, leaving your oratrix his widow, and the
10 following his children and heirs at law by his
11 first wife: - L. J. Wise, Margret Whithead, Mary
12 Barlow, Alice West, Ella Wise & Martha Wise
13 and the following his children and heirs at law
14 by your oratrix, his second wife, to wit: - Jesse
15 Wise, Maude Wise, Lewis Wise & Massie Wise
16 that the said Jesse S. Wise decd. was in his lifetime
17 the owner of certain personal property, to wit: -
18 One mare, one yearling mule and one black horse
19 One cow, one organ & one sewing machine and
20 some other household and kitchen furniture,
21 and also \$3300.00 in money; that at the time of
22 her said late husband's death their said children
23 were aged about as follows, Massie one year, Lewis
24 three years, Maude five years & Jesse seven or
25 eight years; that about the day of November 1891,
26 her said husband, being then in rather bad health,
27 gave to her his entire personal property, including
28 said money, in fact everything that he possessed,
29 stating as a reason therefor that when he married
30 me he was in debt and had a family of small
31 children and that I had helped him pay his debts
32 and raise his children, and he was now about to

1 leave me with another family of small children
2 to raise, and that he wanted me to have every-
3 thing he had, and after my death if there was any
4 part of it left it could be divided between the chil-
5 dren, and accordingly he placed his said money
6 in bank, depositing it in the name of your oratrix,
7 and delivered to her his other personal property, and
8 she has owned and controlled the same as her own
9 property unmolested by any one, until recently,
10 she has learned that some of the first children of
11 her said husband, have had the estate of her said
12 husband committed to C. E. Flanery Sheriff of Lee County
13 for administration, and said Flanery has advertised
14 some of said property owned by her as aforesaid, for sale
15 on the 20th day of May 1893, as such administrator.
16 to wit: "one black horse, three head of cattle, (for which
17 your oratrix had traded the said organ) one sewing
18 machine and other things too tedious to mention".
19 Your oratrix, after the death of her said husband,
20 purchased a tract of land in said County, from J. F.
21 Blanton, ^{and D. S. Ely} at the price of \$2875.00 and paid for the same
22 out of the said money given her as aforesaid by her
23 said husband, and took a deed for the same conveying
24 it to her during her natural life and at her death to
25 the heirs of the said Jesse S. Wise deceased, thus carry-
26 ing out in good faith upon her part the wish of her
27 said husband and investing the same where it would
28 be secure for the children after her death, when in
29 fact she might have lived on it and used every dol-
30 lar of it in her own way and for her own benefit
31 during her lifetime, and she also took one hundred
32 dollars of the said money and divided it equally

1 among all the said heirs of her said husband,
2 and for her generosity she is now threatened with
3 ungratefulness that she had not expected.

4 A copy of said Comeyance from said Blanton & Ely
5 to your oratrix & said heirs is herewith filed marked "A"
6 as part hereof.

7 In tender consideration thereof and forasmuch as
8 your oratrix is remediless, save in a Court of equity,
9 she prays that the said C. E. Flanery Sheriff and as
10 such administrator of the estate of Jesse & Miss deceased,
11 he make the party defendant to this bill and required
12 to answer the same, but not on oath, that being
13 waived, and that he and all others, be enjoined and
14 restrained from proceeding to sell said property, or
15 any part thereof; that proper process issue, and
16 all proper orders be made, and that all such other
17 further and general relief may be afforded your
18 oratrix as in the premises may be just and right.
19 And your oratrix will ever pray &c.

20 Jackson & Blankenship.
21 James W Orr } P. D.

22
23 Virginia, Lee County, to wit:

24 J. A. S. Dyatt Clerk of the Circuit Court in and
25 for said County and State, do certify that Susan A. Ely
26 this day personally appeared before me in my
27 said County and made oath that the facts stated
28 in the foregoing answer so far as they depend upon
29 her own knowledge are true and so far as
30 stated upon information derived from others she
31 believes them to be true. Given under my hand May
32 1st 1893.

J. A. S. Dyatt Clerk.

32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15

Jessie A. Ely

Bill in
Chancery
C. E. Flanagan

H. C. 4.90
M. C. 2.89
Justices 5.50
A 15.00
Co C 25
\$44.04

Information granted regarding
proceedings of bill in
case of property specified
but not to be operative
until after you have
with your personal
representative in the
law denoted
H. K. Monahan

May 13th 1893
To Clerk
of Court
in
Chancery

1893rd 2nd June Rules Bill filed
Spa accepted V. D. Hill
" July Rules D. V. Conf'd
" Cause set for hearing by Bill
" Nov. Term Decree
final O.B. 5-32

5. A. Ely
B.
C. E. Flanary,
Shur.

} Ans.

Virginia, Circuit court for Lee county, to wit:

The answer of C. E. Flanary as sheriff and administrator of all and singular the goods and chattels and credits which were of Jessie S. Mise, deceased, at the time of his death, who died intestate, to a bill of complaint exhibited against him as such administrator by Susan A. Ely, formerly Susan A. Mise, relict of the said Jesse S. Mise, deceased, in the circuit court for the county of Lee;

The respondent reserving to himself all just exceptions to the said bill, for answer thereto or so much thereof as he is advised is material that he should answer, answers and says;

That it is true that the said Jesse S. Mise died at the time alleged in the bill, and that he died intestate, leaving as his heirs and distributees the parties therein named, and the widow, the said Susan A. Ely, and that he also owned the property and money as stated in the bill, and that at the time of the death of said Mise the ages of the children as mentioned in the bill are, so far as the respondent knows, correctly stated, but the respondent denies wholly so much of said bill as alleges that said Jesse S. Mise on the day November 1891, or on any other day, gave all or any part of his said personal property to the said Susan A. Ely; it is true that he had his money left in bank in the name of his wife, the said Ely, but your respondent avers that he intended ^{the said Mise} that she should have the use of said money, undiminished, only during her life time, it being a special condition imposed by him that she should invest the same in real estate, which real estate she could use during her life time, after which time it should revert in fee to his children, and it was a further condition imposed by him and consented to by her, that she should have the deed to said lands made to her during her life time, and to the said children after her death, with which condition she complied as is stated in said bill, and shown by the deed therewith filed marked "A". The respondent also denies that at the time of ^{said Mise's} ~~his~~ marriage with the said Susan A. Ely his family was as a whole small, and that he was to any extent in debt,

and the respondent also denies that the said Susan A. Ely helped the said Mise to pay any debts, or to any extent helped him to bring up his children by his first wife, but on the contrary, the respondent avers that the said Susan A. Ely was to the said Mise more of a burden than a help, and he avers that the older children did most of the house work, and the respondent denies that the said Jesse S. Mise gave the ¹ or any of them ^{as a} reason for the alleged gift of his property, but on the contrary the respondent avers that he the said Mise often expressed himself as being desirous that his children should have his personal property, and that his wife, the said Ely, should have his real estate only during her life time, in order that she might the more properly care for the infant children. The respondent avers that the \$3300.00 in the bill mentioned as being deposited in bank in the name of the said Susan A. Ely, was the proceeds of the lands of the said Jesse then lately sold in the state of Tennessee, and which he intended to invest by purchasing lands in Lee county, Va., but which he was prevented from doing on account of his rapidly failing health, which soon brought death. The respondent denies that the said Susan ever divided any of the money left in bank as in the bill stated, among the children, but he avers that she used the same for her personal benefit, and that all the money left after the purchase of lands as stated in the bill, is, as the respondent is advised, a part of the personal property and as such belongs to the heirs.

The respondent must express the astonishment which he feels at the allegation of ungratefulness on the part of any of the children, when in fact each of them has always been lenient with the said Susan Ely, feeling that in due time she would turn over to them all of the ^{personal} property which was left to them by their late father, and the respondent avers that they continued to rest in this assurance until the said Susan Ely began to be wasteful of the property in her possession, and to make declarations that she meant to make way with all that she could, and that she did not care whether the children of the said Jesse S. Mise by his first wife ever got any of their father's property left them or not.

The respondent denies all fraud, unlawful combination and confederacy: and having fully answered the complainant's bill, prays to be hence dismissed with his reasonable costs in this behalf expended, and he will ever paray, &c.

E. W. R. Ewing,
P. d.

Virginia,

Lee county, to wit:

This day personally appeared before me, A. B. Munsey, Clerk for the Circuit Court of aforesaid county, and state aforesaid C. E. Flanary, whose answer is above written, and made oath that the statements contained in the above answer, so far as made of his own knowledge are true, and so far as made from knowledge or information derived from others he believes to be true.

Given under my hand this the 13th day of September, 1893.

A. B. Munsey
Cir. Co. Clk.

Susan A. Ely
vs. } Ans.
C. E. Flanory,
Admr. J. S. Wise,
deceased.

Filed, Sept 13th 1893

A. B. Munsey, clk

Susan A. Ely }
vs. } In Chancery.
C. E. Hawary, Admin'or, et al.

again This cause came on
this day to be heard upon the
papers formerly read therein,
and was argued by Counsel;
and it being admitted that
all matters involved had been
fully settled between the
parties, and nothing further
remaining to be done, it is
adjudged, ordered and decreed
that the cause be stricken
from the docket.

Susan E. Ely

48. of the Chambers

C. E. Flanory, Adm'r, et al.

Deeds.

O.B.

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Enter this

W. S. L.

March 2, 1896

Susan A. Fly,

vs.

C. E. Flanary, Admr., &c.

This cause came on this day to be heard upon the bill of the complainant and the exhibit filed therewith, the answer of the defendant, C. E. Flanary, and general replication thereto, the deposition of witnesses and was argued by counsel, on consideration whereof, and the court being of opinion that there is not sufficient evidence that the said Jesse S. Mise in his lifetime delivered the possession of the horse, mule, mare and other ^{and} ~~live stock~~ in the bill and proceedings mentioned to the said Susan A. Fly, formerly Mise, it is adjudged, ordered and decreed that the injunction heretofore granted be and the same is hereby dissolved *as to said property,* and the court being further of opinion that the said Mise did give, during his last sickness the organ, sewing machine, and other household and kitchen furniture in the bill and proceeding mentioned to the said Susan A. Fly, and delivered the possession thereof to her, it is further adjudged ordered and decreed that said injunction be and the same is hereby perpetuated as to said last named property.

It is further ordered adjudged and decreed that the costs be paid by said Administrator out of the funds in his hands, *as that may come to his hands as such Admr.* And this cause is stricken from the docket.

Jesse A. Ely

rs. } Penn final.

C. E. Fleming.

Entered lib MS p 532
Nov 15th 1895.

Emilio

Nov. 15, 1895.

H. S. M.

Page 1.
Susan S. Ely } In Chancery
v. C. E. Flanary Adm^r

The depositions of J. M. McConnell and others, taken before me W. C. Foslyn a Justice of the Peace for Lee County Va. by consent of the parties, and by agreement at the Office of Jackson & Blankenship in the said County, to be read as evidence in behalf of the defendant in a Suite in Chancery in the Circuit Court of Lee County, in which Susan S. Ely is Plaintiff and C. E. Flanary Adm^r is defendant. Oct 28th 1893.

J. M. McConnell a witness of lawful age, being first duly sworn deposes and says:

Ques

State your age, place of residence, and whether or not you were acquainted with Jesse S. Wise in his lifetime?

Ans.

I am 47 years of age. I reside about two miles east of Jonesville, Lee Co. Va. I had a little acquaintance with Mr Jesse S. Wise after he moved to Va, and he lived near me about one month before he died, during this month I think

Q.

I saw and talked with him at least once every 24 hours.

Ques.

State, as near as you can, anything you heard him say during this time as to his property?

Ans.

I heard him say that he and Conally Rutledge were going to tend part of the Wampler farm he Miss was to furnish the stock and Mr Rutledge was to do the work. I heard him talk of a Horse, Mare and Mule, he said he wanted to sell the Mule and keep the Horse and Mare, he always spoke of this stock as his own, and they were the same Mr Miss & family brought to the Wampler farm with them when they came there. They brought no other Horse or Mule stock with them, that I knew of.

Cross Examined by Opps.

Ques.

How often did you visit his barn or pasture fields to look for his stock?

This question together with any answer thereto is objected to because irrelevant.

W. R. Ewing,
for depts.

Ans. I never visited his barn, or farm to examine about his stock, all I know about the stock is what I heard Mr Abise say himself. I don't know of any other stock on the place belonging to Mr J. S. Abise or his family.

Quest 2^d Did you ever hear Mr Wise say what he intended to do with his property at his death?

Ans I never did,

Quest 3^d By Sam. Was your feelings good toward Mr & Mrs Wise at the time ~~they~~ lived near you?

Ans. While Mr Abise lived, my feelings towards the family was good.

Quest How about it since Mr Wises death;

Ans. I have nothing against Mrs Abise.

Quest Did any of your family or you ever have any ward or difficulty with Mrs Wise or any of the family, if so tell all you know in regard to it;

This question and any answer is objected to because,

1. It has been answered etc witness himself;

4

2. Because feelings of ill-will or trouble between members of the two families have nothing to do with this case, hence irrelevant, &c.

Ans. I never had any trouble with them myself. but my wife and some of my family did, after Mr Abise's death, ~~I should~~

Said further this deponent saith not.

Witness claims
2 days \$1.00
~~per~~

H. M. W. Crannell

C. T. Rutledge another witness of lawful age being duly sworn deposes as follows:

Ques. State your age, residence, and your acquaintance with Jesse S. Mixe in his life time?

Ans. I am 26 years of age. I reside about 2 miles east from Jonesville I knew Mr J. S. Abise from the time he moved into this County from Tenn. until his death I think about two months

Ques. State, as near as you, or in substance anything you heard said Mixe ^{during your} ^{acquaintance} in regard to the property then in possession of himself or family?

5.

Answer. Mr Abner and myself both moved to the Wampler farm, he went there a little while before I did. we were going to crop together. he was to furnish the stock and I was to do the work. he furnished me a bay mare, I heard him speak of his stock, he always spoke of them as his. he had two horses and one mule. he said he wanted to sell the mule and keep the horses for a team, all the other stock he had, was one cow and he spoke of her as his. There was no other stock belonging to the family that I knew of.

2. Did his wife, Susan A. Ely, take any control or supervision of the property you have mentioned?

Ans. She did not at that time. I mean up to the death of J. S. Bruce.

Cross Examined by Ref.

Ques. Had you ever heard Mr Bruce say what he intended to do with his property at his death?

Ans. I never did.

Are you friendly with Mrs Susan A

6.

Min, & her family?

Ans.

I am,

Have you or your family
ever had any trouble with Mrs
Mise, the deft here or her family?

This question is objected to because family
troubles which do not affect the witness are
irrelevant to the issue.

E.W.R. Ewing, for deft.

Ans.

Yes they had some trouble and I
was present at the time

How do you know that Mrs
Mise had no ~~control~~ of the
Stock, and did not claim them
~~for~~ herself? & tell all you know about it.

Ans.

I was about there part of the
time, and never heard her
claim any of the property as
her own. I lived in the same
yard with J. S. Mise. She might
have claimed the property, as her
own to others but I never heard
her so claim the property.

And further this deponent soith not.

witness claim.
2 days \$1.00

C. J. Rutledge
mark

7.

The further taking of depositions in this case is adjourned until Monday Oct 30th at the House of John West in the vicinity of Hubbard Springs Lee Co Va.

This Oct 28th 1893.

H. C. Forslyn J.P.

Monday Oct 30th 1893, Met pursuant to adjournment at the House of John West in Lee County. Present E. W. R. Brown for defendant and J. M. Morgan for the Plff.

Mrs Alice West, another witness of lawful age being duly sworn deposes and says,

Ques. Are you the daughter of Jesse S. Wise, deceased, and were you living at home with your father when he married Susan, now Susan A. Ely?

The taking of this deposition is excepted too, because the witness is the daughter of J. S. Wise deceased, and as such incompetent to testify in this case.

J. M. Morgan for Plffs

Aus. 2 am the daughter of Jesse S.
5. Mize, and was living at home
when he married Susan A. Ely.

Lus. Tell what you know of the as-
sistance the said Susan R. Ely, then
your father's wife, gave your father
by way of helping him to pay his
debts, raise the children by the
first wife, and all you know
of her helpfulness or trouble to your
father.

Aus. She did a part of the housework
but most of the time she was
not able to carry a chair across
the house. If she ever assisted
in paying his debts. I never
knew it. I was at home most
of the time and had an oppor-
tunity to observe as to this matter.
I believe ^{she} sewed some for people
and bought us children a few
things I cant say how many. If
she ever provided in the way of
provisions for the family I dont
know it. My father supported
the family, fed, clothed and
took care of us.

9.

Ques

If you lived near your father while he lived in Tennessee and before he moved to Virginia, state what he always spoke of the property in his possession up to the time you talked to him or heard him talk last?

Ans

I did live near him in Tenn. up to about two weeks before he moved to Virginia, and I always heard him speak of the property as his own. He lived in Tenn. about one month after he sold out, before he moved to Virginia.

Ques.

State what you know as to whether or not your father gave James Barlow a mule in his life time?

Ans.

He never gave James Barlow a mule that I know of, but he did loan him \$70.00 to buy a mule with.

Quest
15

Cross Examined by Plffs counsel
At the time you speak of living with your father J.S. Wise did you not go to Scholl's school all the time, and while you was at school can you say what Susan Wise was doing?

Ans.

10.

I did not go to school near all the time. I went near half the time to the free school. Most of the time I did ^{know what he was doing} as I heard ~~at~~ it talked over at night what had been done during the day.

Ques.

Did James Barlow ever pay your Father ^{back} the \$70 ^{as} he loaned him to buy the mule?

Ans.

He never did;

And further this deponent saith not.

Alice & West

John West another witness of lawful age being duly sworn deposes as follows.

Ques.

State whether or not you are the son-in-law of the late Jesse S. Wise, and whether or not you lived near him while he lived in Tennessee; also state whether or not you helped to move him to Tan. when he moved; also state who had control and possession of the stock, and how he always spoke of the same?

The taking of the deposition is executed too he being the husband of Alice West & one of the distributees of J. S. Wise's estate.

J. M. Morgan for Aff.

Ans. I am the Son in law of J. S. Abise and I lived near him up to about two weeks before he left Tenn. I was there off and on all the time until he left, and I helped him move to Virginia. Mr Abise ~~seemed to have~~ ^{had} control of all the stock. he told me how to manage so as not to get any of it crippled, and he always spoke of the stock as his own. I often went to him for horses and always got them. I think I got horses of him once or twice after he sold and before he moved to Virginia.

Ques. Did said Mises wife, Susan, have possession of or have control of the property which you helped to move to Va.?

Ans. If she did I never knew anything about it. Mr Mises gave me all directions about the property, if she had. Had any control of the property I think I would have known it as I had an opportunity to know it.

Ques.
1st
12.

Cross Examined by Alf's cousin
Did you not have a mule while
you lived in Tennessee?

Answer. This question is objected to because
irrelevant and foreign to the issue,
nothing has ever been said about
property of witnesses, nor is what he
had a question here directly or in-
directly -

E.W.R. Ewing,
for deft.

Ans. I think I did.

Ques. Now - you know you did,
and did James Barlow not have
one, and did you & him live
together and farm together, &
work your mules together?

This question is objected to for
reasons last assigned.

E.W.R. Ewing, for deft.

Ans. Yes I did have a mule.
We lived together ^{some of the time}, farmed together
some of the time, and both had
mules part of the time, and
worked them together.

Ques. Now please state why it was
that you so often had to borrow
horses or mules of Mr J. Mire;

13.

Ans.

Because I sometimes did not want to use mine, and sometimes because I needed one. Part of the time I had no horse or mule of my own.

And further this deponent with not.
John ^{his} West
mark

The further taking of depositions are adjourned to Jonesville at the office of J. M. Morgan until tomorrow the 31st of Oct 1893.

This Oct 30th 1893 W. C. C. Forslyn J. P.
Met pursuant to adjournment at the office of J. M. Morgan in Jonesville.
This Oct 31st 1893.

Mary Barlow a witness of lawful age being duly sworn deposes as follows:

Ines.

Are you the daughter of Jesse A. Wise, deceased? If so state whether or not you were at home at the time your father married Susan, now Susan A. Ely; and also state all you know as to whether or not said Susan A. Ely helped your father pay his debts by her work, and also

state the condition of her health during the time of her living with your father, and all you know about this matter.

The taking of the above deposition is excepted to, the witness being a daughter of the late J. S. Mice second and one of the distributees of his Estate. J. M. Morgan, Atty for Opp.

Answer I am the daughter of Jesse S. Mice I was at home at the time my father married Susan, now Susan S. Ely. If she helped my father pay any debts by her work I don't know it, I was ^{most} there all the time and if she done so it looks like I ought to have known it. She was sick a good deal of the time, and she was cared for and waited upon by my father and his children. Most of the time, I never knew of her helping support the family by buying clothing provisions &c. all she done was to help about the housework occasionally. I also lived near my father in Tennessee and was about his house quite

often. and have heard him speak of his property, and never heard him call it anybody elses, but his own, after he sold out in Tenn 2 was about him or saw him most every day up to about 16 days before he moved to Virginia. My father seemed to have all the management of the stock, he gave directions the same as he always did,

Ques.

State whether or not Susan A. Ely, the plaintiff, is yet caring for and supporting the younger children of the first family, give all particulars.

Ans

She is not caring for any of them. three of the girls are married, and one of the youngest lives at my house and the other at the house of my sister Alice West. the two last named are under age and unmarried. one is 17 years old and the youngest is 13 years old. she is not paying for their board nor furnishing clothing for them.

Ques.

State what you know about the said Susan A. Ely supporting or caring

for other persons than the children
of your father, either of the first or
lost family?

Ans.

The question and answer to this
is accepted to, because not ad-
vantage to the issue & immaterial.

Ans.

J. M. Maynard for R. L. F.
I know that her mother, two sisters
and three children live in a part of
the house, I don't know whether
she supports them or not. They are
all old except the children, and
have no visible means of support.
I live within $\frac{1}{4}$ of a mile of Susan
A. Ely, and have opportunities to see
and know. I suppose they raised
a little garden and some chickens.

Ques.

Did your father in his life-
time give you a mule or di-
vide any of his property to you?

Ans.

I suppose he did. he loaned my
husband \$70.00 to help pay for a
mule. a day or two before he
left Tenn. he asked me if I knew
how he fared about the \$70.00 &
said he aimed for that to come
out of my part when his things were
divided.

17.

Ines.

After your father sold his home in Tennessee if you ever had any conversation with him about the way he had fixed the money which he had obtained by this sale, state what he said and all about it:

Ans.

A few days after he came from Pineville he was at our house. he showed me the Bank Book and asked me if I knew what he had it put in Susan's name for, and I told him I did not. and he said I did not have it put in her name to knock any of you children out of your part. he said I had it put in her name so that if I should die or drop off. before it was drawn, there would be no trouble in getting it out of the Bank.

Mst.

Cross Examined By Plffs Counsel
How old were you at the death of your Mother?

Ans.

I was ten years old.

Mst.

How long did your father live a widower?

Ans.

About eight months.

18
Ques. ~~How long~~ after your Mother's death
until you married?

Ans. It was about eight years.

Ques. Whom did you live with from
your Mother's death until you
married?

Ans. I lived with my father;

Ques. Was Susan A Miss his last wife
and did ~~and~~ ^{you father} you not stay
during his life, and did not Susan
an A. Miss, buy and make your
clothing, as well as that of
your sisters?

Ans. She was. I married during the lifetime
of my father. Susan bought me two
yards of lace at two cents a yard,
^{at my marriage}
She made some clothing for me
while I was living at home
and also for all the rest of
the children and she bought some
few things for me while I was
living at home - but she did not
buy many for she was not able.

Ques. Did Susan A Miss not take in
sewing, make her gowns and sell
the feathers to help support the
family & make beds for them to
sleep on;

Ans. She took in Sewing. She might have picked the Geese and sold the feathers - but I don't know what she done with the proceeds. if she bought anything to support the family I never knew it.

Quest. Did you go to school any of the time you lived at home with your Father after, ~~his~~ second marriage?

Ans. I went I suppose one half of the free school time, or perhaps a little more.

Quest. How long has your sister been living with you And how long has the other one spoken of her living with Alice West?

Ans. Since about the 19th of May ¹⁸⁹³ Martha the youngest one has been living with me, and Ella the other one lived with me from Nov 1892 until June 10th 1893. Then she went to live with Alice West.

Quest. Why is not the two last named children ~~not~~ living with Susan A Ely, their step mother at this time?

Ans. Martha was at my house, and Susan

70
Sent her clothes to her, and she stayed there because she had no other place to go. Martha come to my house most every day she come to my house ^{one day} and I asked her if she could go to Mr Boyles for me and she said she guessed she could, and I ^{sent} her and Susan saw her on the way and told her to come and get her clothes, and a short time after that her clothes were sent to her and she was given to understand that she must stay away from there that is her step-mothers, Susan got mad at Ella or they both got mad I dont know which began it, and Susan told me that Ella might stay with me, for she should not come and live with her, but I dont know whether Ella heard it or not, but I told her and that is the reason she did not go to live with Susan.

Ques

Will Martha still go to Mrs Ely to borrow things?

Ans.

She did a while for me. but dont go now. nor has not for sometime.

21

Qust. State who is the Administrator of your Father's Estate if you know.

Ans. I suppose it is C. E. Flanders if there is any, and I am informed he is. it was at the ^{request} ~~request~~ of myself and all my sisters that he was appointed, it was done at the motion of myself and my husband, ~~that it was done.~~

Qust. Please state whether or not in this County and at your residence during the summer of 1899, you did not in response to the question asked you by Wm Smith, "What all of this meant, meaning the appointment of an Administrator or, & this quit, were there words or words to this effect, you did not care, you was worth nothing, ~~that~~ at costs could be made out of, and wanted to put Susan, all the trouble you could?"

Answer. I had no such talk that I can remember, and if I had any such talk I think I should have remembered it, And further this deponent faith not.
Mary Barlow

Ella V. Mize another witness of lawful age being duly sworn deposes as follows.

Jues. State whether or not Susan A. Ely has ever given you any of the money left by your father, or property of any kind, except what you eat and wore while you lived with her since your father's death?

Ques. Preliminary question by Plaintiff, Counsel
Are you the daughter of J. S. Mize deceased?

Ans. I am.

The question and answers of this witness is excerpted to the being a child and one of the heirs of J. S. Mize and
J. M. Morgan
for plaintiff

Ans. Yes. She gave me \$10.00 at one time, and a debt of \$8.00 which I collected at another time, I used the money to buy clothes for myself.

Jues. What is your age, and are you being supported by Susan A. Ely? If not, tell why?

23.

Ans. I will be 18 years old the 16th day of December next. Susan & Ruby is not supplanting me or taking care of me. She refuses to do so. I don't know what reason she has for so doing.

Jus. If you ever heard your father say what he wanted done with his property after his death, tell what he said and where it was?

Ans. I heard him say before we moved from Tenn, and after we did move that he intended to buy fifty or sixty acres of land for Ma. and her children, and that he intended for the balance of the children to have their part in money.

Jus. After your father sold his home in Tennessee and moved to Virginia, who had possession and control of the personal property, such as horses, mules, &c.?

Ans. I suppose he did. he talked of them as his own and controlled and managed them like they were his.

Ans. Cross Examined by Wm. A. Smith
When was it; and who else was present

ask - when you heard him say
what he wanted done with his
property?

Ans. I have ^{him} talk before old uncle Mat
Rogers, ^{in Tenn} and my Uncle Lewis Wise
in Virginia, and if I am not
mistaken I heard him talk before
H. M. McConnell.

Ques. ~~When~~ How long have you been
living away from Susan A. Ely,
Ans. Near about one year.

Ques. Did you consent, ~~to~~ and
request that Chas E. Flannery
become adver of your Father's
Estate? And desire him
to take charge of The Estate of
your Father?

Ans. I did.

And further this deponent soith ast:

Ella V. Wise

The further taking of depositions in this
Case are hereby adjourned until
Friday Nov 3^d 1893. at E. W. R. Ewings
office in Jonesville Va.

This Oct 31st 1893. H. C. Joslyn J. P.

November 3^o 1893. Met pursuant to adjournment at the office of E. W. R. Ewing in Jonesville Va.

L. M. Wise another witness of lawful age being duly sworn deposes as follows.

Ques. Are you the brother of Jesse L. Wise, deceased, and were you intimately associated with him during his lifetime, and especially about the time he married Susan, now Susan A. Ely, if so, please tell all that you know of his financial condition?

Answer. I am the brother of the late Jesse L. Wise, and we were partners in business for about 24 years. up to his death. only during the time he lived in Tenn. about the time he married Susan A. Ely, he owed one note of \$80.⁰⁰ or \$85.⁰⁰ and he paid it off soon after he was married. The money with which he paid this note, he made in building a house for Madison Sims. This is all I knew of his owing that amounted to anything. and I would have known it if he had owed any more.

Ques.

After your said brother return from Tennessee where did he live, and who had possession and control of the property brought from Tennessee?

Ans.

The first week after he returned he stayed at my house, & then rented the Wampler farm for him and myself, and he then moved to that place, and he died there on the 11th day of Feb^y 1892. he had full control of all the property he brought from Tenn.

X Examined by Plaintiff

Ques.

Did you hear him ^{say} what he intended to do with his property at his death?

Ans.

When he loaned Newton ^{some money} ~~Waggon~~ ^{and} took a deed of trust and note for it in Susan's name, he remarked that he wanted Susan to have what he had, and when he was gone he wanted me or administrator, over what he had. And further this deponent said that

Witness
1 day

claims
50 cts.

Edl. Mize

Mrs Margaret Whitehead, another

27.

Witness of lawful age being duly sworn deposes and says.

Ques.

Are you the daughter of the late J. S. Mize, if so were you ^{Susan, now,} at home when your father married Susan A. Ely; state all about her helpfulness to your father, and all you know about her assisting in the payment of any debts, helping to support the family, &c.?

The taking of this deposition is objected to because the witness is the daughter of the late Jesse & Mize deceased, and the answers not legitimate in this controversy.

J. W. Morgan for Opp.

Ans.

I am the daughter of the late Jesse S. Mize. I was at home when father married Susan A. Ely. She did not help pay any debts, that I ever knew of. She had no ^{money} property ~~when~~ ^{when} she came to our house, except one bed & bedding. She done nothing towards supporting the family except a little house work. She ~~was~~ ^{is} not able to work after the first year after she came there.

Ques.

State whether or not you or the other children ever consented that said Susan Ely take possession of the personal property

28
Answer.

left by your father at his death?

I did not. I have heard the others object to it, and if they ever consented to it I never knew it.

X Examined by Plaintiffs Council.

Ques.

How old was you when your Father married Susan, and how many younger sisters & Bros did you have?

Answer

I was Thirteen or fourteen years of age. I had four sisters younger than myself, the next about 12. the next about 10 - the next about 8. and the youngest was about 10 ^{months} ~~days~~ old when they were married.

Ques.

Did you and your sisters continue to live with your Father & Susan?

Ans.

I did until I was married, which was five or six years. and the others all continued to live at home until some of them were married.

Ques.

Did not Susan A. Ely while you and your sisters were at home take in sewing and get the pay and use it to buy things for you children ^{to wear} and provisions for your support?

29.

Answer. She may ^{have} bought some little things like lace or Hamburg. but I do not remember of her ever buying provision or clothing.

And further this deponent saith not.

Attest H. Whitehead

Martha D. Wise another witness of lawful age being duly sworn deposes and says:

Ques. Are you the daughter of the late Jesse S. Wise? If so, tell where you now live, and who is supporting you. Has the said Susan A. Ely ever given you any of the money or property left by your father?

The taking of this deposition is Excepted to because the witness being the daughter of J. S. Wise and is competent to testify.

J. M. Morpuffin Reff.

Ans. I am the daughter of Jesse S. Wise, and I now live with James M. Barlow and he is supporting me. Susan A. Ely has never given me any of the money or property left by my father. The reason I am not living with Susan A. Ely is she made me leave.

And further this deponent with nat.
 Martha^{her} D. Mize
 make

L. M. Mize another witness of
 lawful age - being recalled in
 Rebuttal, and duly sworn deposes
 as follows.

Jur.

If you heard Newton Wygal depose,
 state whether or not you were present
 at a conversation at your house in
 which said Wygal made a con-
 tract for the loan of some money,
 and tell with whom the contract was
 made, and all about it?

Jessie

~~I was there~~ I have heard
 the deposition of Newton Wygal
 read. I was there at my house
 when Mr Wygal came, and my
 brother Q. S. Mize was there, and
 they had a long conversation about
 past favors, and Jesse told him
 he was glad he was in a condition
 to help him if he needed help.
 Mr Wygal and Jesse had some
 further talk, but I heard Mr
 Wygal and Jesse make the
 contract for the loan of the

money, and if Susan had anything to say in it, I did not hear it. Susan was in and out of the room getting dinner.

Sus.

Stole whether or not any hauling hay and plunder was done by the team of the said Newton Wygal, and anything you know as to any payment for the same?

Answer.

Mr Wygal's team hauled a load of plunder from the depot to near Orr's Mill, and Mr Gilbert hauled the load from the Orr's Mill place to J. S. Wise up to the Wampler farm, and I paid Mr Gilbert for his services but not for the use of the team, I made this payment for J. S. Wise or by his order.

X Examined by Plff.

How often was Mr Wygal to see you or J. S. Wise while he was sick? and at your house?

This question is objected to because immaterial.

Ewing -

Ans

He was at my house twice during the week he was stored at my house. I don't know how many times he was at the Wampler farm.

3
Ques?

Ans

Do you pretend to state all that
passed in conversation with between
your Bro Jesse, and Newton
Mygal, On Susan Wise and Mr Mygal?

No Sir, I do not.

And further this deponent Smith not.
S. M. Mize

Virginia Lee County To wit.
I Henry C. Joslyn a Justice of the Peace for
the said County and State, do hereby Certify, that
the foregoing depositions of F. M. McConnell,
C. J. Rulledge, Alice West, John West, Mary
Barlow, Ella V. Wise, L. M. Wise, Margaret
F. Whitehead and Martha S. Wise, were duly
taken, sworn to and subscribed before me, at
the times and places mentioned in the
Caption of the same. Given under my
hand this 3^d day of November 1893.

Henry C. Joslyn J. P.

Susan A. Ely Reg.

In Chancery

C. C. Filciney, Deft

The depositions of

F. M. McConnell

C. J. Rulledge

Alice West

John West

Mary Barlow

Ella V. Wise

L. M. Wise

Margaret F. Whitehead

+ Martha S. Wise

Received from H. C. Joslyn

before whom taken and

filed Nov 4th 1893

A. B. Munroe

clerk

Short witness \$2.50

J. P. \$7.50

Susan A. Ely,
vs.
C. E. Filmon, Adm^r } In Chancery.

Depositions of Kitty Warren
and others, taken before me
H. C. Forsgren a Justice of the Peace
for Lee County Va. by Consent of
the parties at the office of the
Circuit Court Clerk's office, in
said County, to be read as
evidence in behalf of the
Plaintiff in a suit in Chancery
pending in the Circuit Court
of said County, in which Susan
A. Ely is Plaintiff, and C. E.
Filmon, Adm^r vs. is defendant.
This October 27th 1893.

Ques

Answer.

Kittie Warren a witness of lawful age and
being first duly sworn deposes and says.
Please state anything you may have heard Jesse
Smith deceased, say in regard to a disposition
of his property, and when it was & where?
I was living very close to him
in Tenn when he sold his land.
When he told me he had sold
his land, and checked his
money to Susan, I told him
if I was in his place I would
divide what I intended to among
the children, and some trouble
and he told me he had given
them all he intended to. That

he intended for Susan to know what he had to raise her children on. I understood by his reference to Susan that he meant his wife and by his reference to them that he meant his children by his first wife, and by the children to be raised he meant his children by Susan his last wife. This conversation took place at the house of Jesse S. Wise in the State of Tenn. This was not long before he moved from Tenn into Virginia. This was about two years ago.

Ques

Please state the condition of Mr. Jesse Wises' health at the time you heard him make the above statement?

Answer. He was very poorly.

Questions by defendant.

Q.

What relation are you to Susan R. Ely, the plaintiff in this case?

Ans

I am Susan S. Ely's mother.

Q.

What is your age?

Ans. I am going on Seventy four years of age.

Q. How long after the conversation which you have mentioned in your examination in chief, between you and Jesse S. Wise, until he moved away from Tennessee?

Ans. I don't know exactly. but think it was about Three months.

Q. After he moved to Virginia, did you ever hear him say anything about the disposition of his personal property?

Ans. I never heard him say anything about it in Virginia. as I still remained in Tenn. and did not return to Virginia until after Mr. Wise was dead.

Q. Did not Mr. Wise have the possession of his personal property when he moved from Tennessee to Virginia?

Ans. I reckon he did, I don't know who else had it.

Q. Did you not tell Geo. Doyle at his house some time since you moved to Virginia, that you wished the heirs of Jesse S. Wise would sue Susan, the plaintiff in this case,

because Jesse had given her nothing,
or none of his personal property, or
words to that effect?

Aus. I don't recollect of having
any such talk.

And further this deponent with Not.

Witness

Claims 1 day 50 cts

Kitty ^{he} Warren
Mark

Susan A. Ely another witness
of lawful age being duly sworn
deposes as follows.

Ques

What is your age, and are you the widow of
Jesse Ely deceased, and are you the plaintiff
in this suit?

Answer I am thirty years of age, I am
the widow of Jesse E. Ely
decd and am the plaintiff in
this case.

Ques

When and where did your said husband die?

Aus He died the 11th day of Feb 1892.
in Lee Co Va about 2 miles
west of Jonesville.

Ques

When did he sell his land in Tenn and for
what price and when did he move to Lee
Co Va?

Aus

He sold his land in Tenn in
October or November 1891. and

5.

(5)

Ques

Moved to Virginia in Jan
1892. and he died in Feb
1892. as stated by me.

Please state what disposition your said
husband made of his property before his death
and all about it?

Ans.

After Mr Wise sold his land
and paid some debts he owed
in Tenn. I think he had left
about \$3325.⁰⁰ The man Mr
Wise sold to paid him through
the Pineville Bank, and he
left the money on deposit in
the Pineville Bank, and on
his return home from the
Pineville Bank, he told me
to go up stairs, and get the
Pen & Ink for him. he said
he wanted to put my name
in the books. I then asked
him what that meant, and
he said he aimed for me
to have everything he owned.
He told me to cut me off
with the third of what we
had I could not live and
raise these little children.
For he says we live hard

enough with all we have got
and with me to help you.
he said he did not think
he would live long as he
was worse he expected than
people thought he was. That
he had raised his first children
and never put anything hard
on them, and that he had
given the three married ones
as much as most poor men
could give their children, and
he said now Susan you have
helped raise these children and
before any son-in-laws get any-
thing he wanted me to have
it to raise his little children
upon, and he asked me to
buy 75 or 80 acres of land
and he said if there was
anything left after 2 was
done with it, it could be
divided amongst them, after
we moved from Tennessee to Virginia
Mr Wise had his money
transferred from the Pineville
Bank to the Powells Valley Bank

in Lee County Va and had
it placed to my Credit. There and
I have drawn it all out.
Mr Abise frequently talked to
me about the money after
we moved to Virginia and
said he would fix it so that
I would have no trouble in
getting the money. and he also
stated that he wanted me to
have not only his money but
all the other property that he
owned, and he turned over
all his property to me and
put me in possession of it.
The Books spoken of were two
small books that showed the
deposits in favor of Mr Abise
in the Pariville Bank. Sometime
in the year 1892. I divided up
fifty dollars with the six oldest
children which was ten dollars
each.

Questions by the defendants:-

- Q. Is David S. Ely, the husband to whom
you are now married, living?
A. Yes. he is now living
In view of this fact the defendant by

8.

except to the deposition of the said
Anson A. Ely going as evidence in
this case because she is both the wife
of said Ely who is living and of said
Mise deceased. All questions put to her
with any answer thereto are objected to.
E.W.R. Ewing for depts.

L.

At what time did your said hus-
band, the late Jacob S. Mise, deliver to
you the other property which he had
beside the money which you men-
tion as being put to your credit in
bank?

Ans.

It was the morning he asked me
to get the Pen & Ink for him, &
next morning after he come
back from the Pineville Bank
and while we were still
living in Tenn.

L.

Were the children of the said Mise by
his first wife all grown at time of
his death?

Ans.

They were all grown except one
and she was twelve or thirteen
years of age.

L.

During your married life with
said Mise, were you not sick and

9.

unable to work much of the time?

Ans. I was Sick some. but worked most of the time.

Q. You state that your said husband said that after your death the prop-
erty ^{if any left} left could be divided among the children, did you not understand that you were to have only the use and not the ^{actual} ownership of said property?

Answer. I understood That the property was to be absolutely mine.

Q. What property did your husband have at the time the money which you mention was put in bank, beside this money?

Ans. As well as I remember we had Two Cows. Three mules + Two Horses. one organ. one Sewing machine. two or Three Calves eight Sheep. one Sow + pigs.

Q. Was the deed which you have filed ~~with~~ herewith marked "A" from L. F. Blount to yourself made in accordance with the wishes and request of the said Jesse S. Wise?

Answer. That deed was made as I directed it to be made. Mr Wise said nothing to me

Ques.

about any deed.

The affidavit which you made to the bill which you filed in this suit is correct, is it?

Ans.

That bill is correct.

Re-examined.

Did Mr Wise during his life give to any of his heirs, any of the stock you have before mentioned, if so who and what stock?

Ans.

He did. he gave Mary Barlow his daughter one mule, and one to Alice West his daughter, and a heifer calf to his daughter Ella Wise, all out of the property mentioned by me.

Ques.

Did you take in sewing, and do other work, and get pay for it, and use the money in supporting his family?

Ans.

I did: and when I could not get money I took store pay, and when I could not get that I took something to live on.

11.

2.

Recross exam. :-

Will you please mention all of those whom you can remember for whom you did work for which you received pay?

Ans. I worked for J. L. Seagg's wife for Isaac Seedy's wife, widow Seedy's family, widow Lorus. Mrs J. H. Ewing and others that I don't now remember

Ques. What personal property other than the money left in bank as mentioned by you was there at time Jesse S. Wise died?

Ans. One Cow, one ^{two} ~~year~~ year old Colt, one 1. year old Mare one Mare, one organ, one Sewing Machine.

And further this deponent soith not.

Susan ^{his} ~~X~~ A. Gely
mark

The further taking of depositions in this case are hereby postponed and continued until tomorrow Oct 28th 1893. at 1 O'clock P. M. at the same place.

This Oct 27th 1893.

H. C. Forslyn J. P.

12-
Met pursuant to adjournment, by
Consent of parties at the office
of Jackson & Blankenship in
Jonesville Va Oct 28th 1893,
William P. Dryden a witness of
lawful age being duly sworn
deposes as follows.

Did you know J. S. Wise during
his life time, and did you ever
hear him say anything in regard
to the disposition of his property, &
do tell all he said about it?

Ans.

I did know J. S. Wise in his
lifetime, and I heard J. S. Wise
say that he had sold his land
in Tenn, and had put the money
in Bank in Kentucky, and that he
had placed the money to the credit
of his wife, and that he intended
for her to have what property
he had, that she had been very
kind to him, and his first wifes
children, and that he intended
for her to have his property to
raise his lost children upon.
This talk happened after he returned
from Tenn, and a short time before.

his death, and at the Post office
in Jonesville Va.
cross examination.

Q. Did said Wise mention any
other property except the money in
bank?

Ans. He simply said his property.
And further this deponent saith not.

W. P. Dwyer

The further taking of depositions in
this case is adjourned until Monday
Oct 30th at the House of John
West in the vicinity of Hubbard
Springs in Lee County Va.

This Oct 28th 1893.

H. C. Forslyn J. P.

There being no witness to examine
for the Plff. in this case the taking
of depositions in this case is adjourned
until Tuesday Oct 31st at the office
of Powell's Valley Bank in Jonesville Va.
This October 30th 1893.

H. C. Forslyn J. P.

Met pursuant to adjournment at
the office of Powell's Valley Bank in
Jonesville Va. on this Oct 31st 1893.
H. J. Morgan another witness of

lawful age being duly sworn
deposes as follows.

Must, 20

By Plffs. Are you president of the ^{Powells} Powell's Valley
O Did Jesse S Wise during his
life-time call upon you to collect
some money he had deposited in the
Pineville Bank to the credit of Susan
A Wise, his wife, If so tell all
you heard him say about it,
state the amount you collected &
who for and all you know about
it?

Ans.

I am president of Powell's Valley Bank.
A few days before the 22^d of Jan
1892. J. S. Wise came into the Bank
and said to me that his wife
had some money in the Pineville
Bank, and asked me if we
could collect it for her, and I
informed him that we could. I
then asked ^{him} I think how much
money his wife had there, and he
told me as well as I now
remember that she had thirty
three hundred dollars (\$3300.00)
and my recollection is that he
showed me a Bank pass book

in which Susan A. Mize was
 Credited with That sum. My
 recollection now is that I told
 him his wife would have to
 sign a check in order to draw
 the money, and my recollection
 now is that I prepared a check
 and gave it to him, and told
 him to take it home and have
 his wife sign it, and bring
 it back and we would collect
 it, and about the 22nd day of
 Jan. 1892, he returned with
 the check, and his wife's name
 to it, and we gave his wife
 Credit for the amount of the
 Check \$3300.⁰⁰ ^{in Powell's Valley Bank} and we collected
 that amount for her, from
 the Pineville Bank. Mr. Mize
 did tell me something about
 how he wanted his affairs
 managed, but I cannot now
 detail what ^{all} he said on that
 occasion. I remember the fact
 however that he said the money
 was in the Pineville Bank in
 his wife's name, and he wanted
 it kept in his wife's name.

and he stated to me some reasons why it was he placed the money to his wife's credit in the Pineville Bank, and he gave me as well as I now remember about the same reasons for wanting it kept in her name in the Powell's Valley Bank, but I have now forgotten the reasons he gave me, about the first day of Nov 1892. Susan A. Mice or some-one for her. I do not now remember which, deposited in the Powell's Valley Bank the further sum of \$326.⁸⁴ making the whole sum deposited in her name \$3626.⁸⁴ and the whole of this sum, was drawn out of Powell's Valley Bank by Susan A. Mice, as is shown by eight checks filed herewith as part of this deposition, And further this deponent with oath,

Henry J. Morgan

William C. Smith another witnesses of lawful age being duly sworn deposes as follows:

Quest By Refs Connee. Do you know

17.

Mary Barlow, and did you ever hear her use any language to this effect - That she did not care how the suit went - That they were poor and the costs could not be collected off of them and they did not care what it cost Susan a day, or how much trouble she was put to?

Ex.

This question is excepted to because witnesses' attention was not called to it as it now stood, especially first part.

E.W.R. Erving for ^{draft}

Ans.

I know Mary Barlow - but don't ^{think} I ever heard her have such talk - but will not be positive.

Ques.

Did you ever hear any of the his or distributors of J.S. Miners declared say that they did not care how the suit went - They would not have to pay the costs, and wanted to put Susan to all the trouble they could, & to state all you heard & who it was?

This question together with any answer is objected to because no

80.
witness aside from one mentioned in
preceding questions has been asked
this question or any one of sim-
ilar import, and certainly what
some one who has not testified might
have said in cordial conversation
cannot affect this case.

E.W.R. Ewing, for deft.

Aus. Sometime during this last Summer, about
harvest time, I heard Mr. Borlow say
that if he gained nothing he would
not be looser, and would make
~~them~~ pay out all he could. he
said this in response to my telling
him they would break themselves
up losing. I understood him to
refer to Susan & Ed.

Cross examination by defendant.

Jus. Did you understand Mr. Borlow
to have reference to this suit or the
trouble over the cradle?

Aus. I understood that they meant no
suit in particular, as I knew
nothing about their suits.

And further this deponent sooth not.

Witness claims
1 doz 50 cts.

William ^{his} C. Smith
mark

Charles C. Flanory another witness of lawful age being duly sworn deposes as follows.

Questth By Plffs. Did you know Joseph S. Wise during his lifetime and are you the Adm^r of his Estate?

Ans. I knew Mr J. S. Wise, and am administrator of his estate.

Questth As such Adm^r did you go to Susan A. Ely's and say you ~~was~~ had come to take charge of his Estate, and tell all that was said and what you did in the matter?

Ans. I went there and told Mr Ely and Mrs Ely my business, and that I had come to see what there was to sell if anything. My recollection is that Mrs Ely went on to tell what there was left at Mr Wise's death, and told me Mr Wise had given it to her prior to his death. They told me not to sell ^{were going to} that ~~depend~~ it. I told them I would take a list and that they could stop me from selling by a bill of injunction, which was done.

Questth Did you live near J. S. Wise in Seaco

201 Q^d after his marriage to Susan A. Ely, &
as how long, & how far from them?
and did you visit them while you
so lived by them?

Ans. yes I lived near him, from four to five
years. I visited them frequently all
that time.

Ques. Please state ~~what~~ was the
general condition of Susan A. Miss
now Susan A. Ely's health during
this time?

Ans. Sometimes she was sick, but I took
her to be generally well. she was
on foot most of the time, and attended
to her general work about the house.

Ques. Was the children of James &
Mize, by his first wife then living
with him?

Ans. They were.

Ques. If you had occasion to visit
please state either or not, Susan
then their step mother took care
of them, and they were neatly
clad, and anything you may observe
about her attention to them?

Ans. Mr Mize was a man that generally
took his family to church and

other places with him in a wagon and I thought he had his children as well fixed as he was able. They did not go extra well fixed week day - but about as well I thought as he was able to fix them. Susan his wife generally went with them, and when I was about she treated the children very kind I thought.

Examination by deft.

Ques. Were you about the kitchen much and do you know whether Susan or the children of the first family did most of the work?

Ans. I was not about the kitchen much, and cannot tell. They all seemed to have a hand in the work as I noticed it.

And further this deponent saith not.

S. C. Flannery

The further taking of depositions ^{in this case} are hereby adjourned until Friday Nov 3^d 1893, at E. W. R. Ewing's office in Jonesville Va.

This Oct 31st 1893. H. C. Jorlyn J. P.

Nov 3^d 1893. Met pursuant to adjournment at the office of E. W. R. Ewing, in Jonesville Va.

Newton Wozgal another witness of lawful age being duly sworn deposes and says;

Ques^t By Plaintiff's council,

Did you know Jesse S. Wise during his lifetime? If so state how long prior to his death did you see him? Where at? and state all you heard him ^{say} ~~state~~ in regard to the disposition of his property?

Answer I did know Jesse S. Wise. I saw him about one week before his death, at the Wampler farm where he lived about two miles east from Jonesville Va. Some two or three days after he arrived in this County from Tenn. I saw him at his brother L. M. Wise's house in Lee County Va. and at that time I was needing some money, and Mr. Wise knew it and said to me that he could help me. He asked me to loan him his vest, and I did so, and

he took out a Bank Book and also a Check Book on the Pineville Bank, and showed it to me, and as near as I can remember he had \$3300.00 to the credit of his wife Susan A. Wise in the Bank, he said he had given this money to his wife Susan, he wanted her to raise his children, I borrowed \$110.00 of this money and executed my note and a deed of trust on my land, to Susan A. Wise for that amount. during the conversation he told me Susan had been kind to him, and his children, and helped to raise them, and that he had kept ^{as many as} two head of horses and his household plunder for his wife to use and control as she saw fit. he also said he had an organ that he had given to his wife, I hauled his goods from the depot and also some hay. and he told me his wife would pay me, which she has done.

So much of the above deposition, and so much of all depositions taken by the plaintiff in this case, is objected to

24.

1 as refers to the money deposited in bank, ~~and~~ and is asked to be excluded, because immaterial to the issue as no question is raised either by the bill or answer as to that part of the estate so deposited and disposed of, but it is admitted that said money was used as is claimed by the bill according to the wish of the late J. S. Wise.

Giving for debt.

Cross examination.

Ques. With whom did you make the contract for the money which you borrowed, Jesse or Susan?

Answer. I made the Contract with Mrs Wise and gave her my notes for the same. As I before stated Mr Wise asked me to hand him his West. and I did so, and he took out the books as stated showing that the money was all right, and he Mrs Wises Consent I got the money.

Ques. You say that you were paid for some hauling by Susan, tell the time and place and all the attending circumstances.

Ans. She paid me I believe the day I got

25.

The deed of trust transferred the ~~money~~ ^{deed} it was paid by Mrs. Wise to John R. Gibson for me, here in Jonesville. I don't know as I was present, but Mr. Gibson told me about it a few moments afterwards, and it was after the death of Mr. J. S. Wise, the amount for hauling was something less than three dollars.

Ques. Who was present besides J. S. Wise and his wife when you made the contract for the money which you mention?

Answer I think his Brother Lewis Wise was there a part of the time. I don't know that he was in the room at that time.

Ques. Did you ever receive any other pay for the hauling and hay which you mention, except that which you say was paid to J. R. Gibson for you? If so, who paid it?

Ans. I don't think I did. Mr. John Gilbert drove my team a part if not all the time, and some body else paid him for his work. The pay that Mr. Gilbert received was for hauling a load when he was not working for me.

Ques. During the time the plunder and
hay was being hauled by your team
and while John Gilbert was driving,
for whom was he working, you are
the one for whom the hauling was
being done?

Answer. What time he ~~was~~ drove my team
and hauled the plunder and hay
if he hauled more than one day
he was hauling for me.

Ques. How many days hauling did your
team do?

Ans. I do not know, what was done
was done in pieces,

And further this deponent Smith test
Newton Wygal

Virginia Lee County Court.

I, Henry C. Joslyn a Justice of the
Peace for the ^{Said} County, and State, do
hereby certify, that the foregoing depo-
sitions of Kitty Warren, Susan A. Ely,
W. P. Dryden, H. J. Morgan, Wm. C. Smith
C. E. Flanoy and Newton Wygal,
were duly taken, sworn to and subscribed
before me, at the times and places
mentioned in the caption of the same,
given under my hand this 3^d. day of
November 1893. H. C. Joslyn J. P.

Susan A. Ely Plaintiff
In Chancery }
C. E. Filanary Adm Deft

C. E. Filanary Adm Deft

The Depositions of

Fritz Warren

Susan A. Ely

W. P. Dryden

H. J. Morgan

W. C. Smith

C. E. Filanary &

Newton Wiggall

Received from H. C. Joslyn
The Justice before whom taken
and filed Nov the 4th 1893
A. B. Munroe Clk.

Costs Witness 1.00

J. P. \$ 6.00

Susan A. Ely
vs.
C. E. Hanway, adm'r et al

} In Chancery.

\$1⁰⁰
Rec'd of Geo. W. Blankenship
One Dollar in full of witness
fee. Due me in the above styled
Cause. This Dec. 27, 1894.
attest: C. J. ^{his} Rutledge
mark

E. W. R. Ewing

\$10⁷⁰
Rec'd of Geo. W. Blankenship
Ten Dollars & Seventy cents —
amount in full due ^{against} me, collected
by said Blankenship from C. E.
Hanway, adm'r in the above named
Cause — in full of fees bill, costs
collected recovered by me & bal-
due me on burial expenses —
also including 50¢ due Hitty Worren
as a witness for me in said Cause.
Also rec'd of said Blankenship
one note of \$40.00 executed by
D. S. Ely & Geo. W. Blankenship
said adm'r on Dec. 16, 1893.

J. A. L.

Aug 7 1894

Susan A. Ely
vs.

C. E. Flanory, adm'r re

\$1.00 Rec'd of Geo. W. Blankenship one dollar,

my witness fee in the above cause.
This march 13, 1895. C. M. McConnell

Susan A. Ely

vs.

C. E. Flanory, adm'r etc.

Receipts.

Jonesville, Va., *May 3* 1892 No.

Powell's Valley Bank

Pay to *Floyd Blanton* or Order, \$1000—
Ten Hundred - - - DOLLARS.

For *Land*.

Susan A. X ^{*her*} *Miss*
Mark

...
L. J. Stanton -
mark

Jonesville, Va., April

1892 No. 2

Powell's Valley Bank

Pay to *S. F. Blanton*

or Order, \$1000⁰⁰

One Thousand

DOLLARS.

For *five hundred and no cents*

Witness to make
H. R. Gilman

J. H. Isaacs
cashier

J. F. Blanton

Jonesville, Va.,

May 3 1897 No. —

Powell's Valley Bank

Pay to

Wm. H. H. H. H. H.

or Order, \$1110.00

DOLLARS.

For

Cash

Four hundred and ten dollars

Wm. H. H. H. H.
Schmidt

Susan H. H. H.

11. 12. 1898
H. J. Morgan atto Inetta

POWELL'S VALLEY BANK,

No. _____

Jonesville, Va., Feb 5 1892

Pay to Lewis M. Miss. or order \$89.75
Eighty Nine and 75/100 Dollars

For

Susan A. Miss

S. H. Mize

Jonesville, Va., Dec. 17 1892 No. 4

Powell's Valley Bank

Pay to. Self for cash

or Order, \$26.84

Twenty Six & 84/100

DOLLARS.

For

Wm. J. Morgan

Susan A. Hise
made

Jonesville, Va.,

Jan 17

1893 No. 5

Powell's Valley Bank

Pay to *Myself*

or Order, \$*200.*

Two Hundred

DOLLARS.

For *cash*

Witness
H. J. Morgan

Susan A. Allen
mark

POWELL'S VALLEY BANK,

No.

Jonesville, Va.,

4/4

1895

Pay to

Myself

or order

\$100-

Dollars

One Hundred

For

Stump

Jessie A. Mose
Mark

✠ VIRGINIA. ✠

No.

JONESVILLE,

11 / 1

1892

POWELL'S VALLEY BANK,

PAY TO *Yourselves*

OR BEAREF

One hundred & 00/100

DOLLARS

~~\$ 100 00~~

J. F. Chase

1st

Witness claim.
J. P. Claims & Co.

Susan A Ely et al vs C. C. Flannery Adm'r

Deposition
To a bill in chancery
in the Ct of the County

The depositions of
S. S. Rose George Vanbebers &
Martha Vanbebers and others taken
at the dwelling house of Marion
Moyness in Claiborne County Ten-
nessee, pursuant to notice and ag-
reement by the above named parties
On this the 23rd day of Oct 1893, which
are to be read on behalf of the plain-
tiff in the above styled cause, in
the cause now pending in the Circuit
Court of Lee County Virginia, in
which Susan A Ely et al are Plain-
tiffs and Chas E Flannery Adm'r
Defendants,

S. S. Rose a witness of lawful
age after first being duly sworn
deposes & says,

Quest 1st

How old are you & where
do you live?

Ans,

I am about 62 yrs and
live in Claiborne Co Tennessee.

Quest 2nd

Did you know the late Jesse
S. Wise dead?

Ans 2nd

I did, and lived about 10 miles from

for some 2 or 3 years, and visited him frequently and he visited me also.

Just 3.

Did you ever hear him say anything in regard to what he intended to do with his property, & if so tell all about it;

Ans 3

Ques 3

I have, It was while he lived in Tennessee and during the time of his last sickness. He said that he intended Susan Miss his wife, to have all he had during her life to raise her children with. At this time Mr Miss had sold his land in Tennessee and had a check ^{given} in the ~~the~~ name of his wife, and he said it was for her,

And further this deponent sayeth not S. S. Bell

Martha Vanhook another witness of lawful age, after being duly sworn depose and say,

Just 1st
Ans 1st
Ques 1st

How old are you & where do you live
Ans 30 Years Old and live in Claiborne County Tenn

Did you know the late Jesse S Miss Branch, & how far did you live from him, and tell all you heard him say in regard to the disposition of his

Ans 2nd.

property.

I did know Jessu S. Mizie and lived in about 300 yds of him for nearly 3 yrs. I was with him often during ^{all} this time and heard him talk frequently:

He said that he intended - Susan A. Mizie his wife to have all he had ~~at~~ ~~the~~ ~~top~~. That he never would get well and was going to leave her with a lot of small children to raise and what he had was for her to raise them on. Mr Mizie owned ~~and~~ a farm adjoining ours and sold it. He had a check for the money in the name of Susan A ^{Mizie} his wife and said he was going to put it in Bank for her. I once heard Mr Mizie just before he left - I never say that he had given to Mr West & James B. Brown a horse or mule and that was all he was ~~now~~ going to give them. I have heard Mr Mizie say his wife had helped him raise his children by his first wife, and that he never saved much money until he married her and she helped him to make all he had - And further this statement I cannot not

Martha Campbell

George W. Warbelber another
evidence of lawful ^{sound memory} age during duly
examined, sworn and say -

Exhibit 1st by Plff - atty

How old are you and where do
you live

Ans - 1st

I am 39 yrs old and live in
Clairborn County Tenn.

Exhibit 2nd

Did you know the late James
S. Wise, where did he live

Ans,

I did and he lived in Claiborne
County Tennessee, and lived on
an adjoining farm to mine,

Exhibit 3rd

Did you ever have any talks with
the said Wise, if ~~yes~~ so if ~~anything~~
what did you hear him say in re-
gard to the disposition of his prop-
erty, and tell all you heard him
say about it?

Ans - 1st

I had frequent talks with James
S. Wise and he always told me that
he intended Susan Wise his wife
to have all he had.

He also said his present wife had
helped to raise his children by the
his first wife, and he did not think
it right if he should die to leave

his former wife to raise a family of young children, and leave her nothing, to raise them on and give it to those they had already raised. And that he intended to give her (his wife) all that he had ~~at the~~ ~~for~~ ~~the~~ ~~time~~. I have heard Mr. Price say that Susan helped him make all he had.

He sold the lands he owned in Tennessee and adjoining one, and said he was going to Va. Mr. Price was in bad health and said he never expected to be well again.

I also heard him say that he did never intend Josiah West or James Ballou have anything he had, that they would not take care of it.

And further this deponent saith not.

Geo. W. VanBibber

Jacob Meathinson an other witness of lawful age and disposing memory After being duly sworn deposes and says

1125/1st

and

just of,

How old are you & where do you live?
I am 54 yrs old live in Lebanon Co Tenn.
Did you know the late Dea S.

Ans

Mize deceased and where did he live,
I did, I know him both in Va
and Tenn, he lived in Tenn
about 1/4 of mile from him

1127 3

Did you ever hear him talk
in regard to the disposition of
his property, & so what did he
say, and tell all about it;

Ans 3

I never had any talk with ~~him~~
Mize in regard to his property
at all: and know nothing of it-

And further this deponent saith
not.

Jacob Weatherman
State of Tennessee Claiborne Co to Wit.
I Marion Moyes, a Justice of
the peace of the 13th Magisterial
district in the County of Claiborne do
certify that the above named S. S. Rose
Martha Vanhubbens, Geo W Van-
hubbens & Jacob Weatherman per-
sonally appeared before me at
my residence in Claiborne
Co Tenn on the 23^d day of Oct
1893, and after first being duly
sworn made the statements
in the preceding depositions, and
that I read them, unchanged and

delivered them to the post master
at Compensation Post Office in
my County, to the ^{directed} Circuit Court
Clerk of Leeson.

Given under my hand & Seal
This the 23^d day of Oct 1893.

Marion Mayes, P.

Susan A. Wise et al
v. S. J. DeFontaine
C E Flannery Adm
Received by mail in good
order and paid Oct 27th 1896
W B Munsey
clerk

Writ	1.00
J. P.	2.00
	<hr/>
	3.00

This Deed made this the 2nd day of April 1892 by and between Isaac F. Blanton and Ordelia B. Blanton his wife, and David S. Ely, parties of the first part, and Susan A. Mize and the heirs of Josse S. Mize of the second part, all of Lee County Virginia, Witnesseth that for and in consideration of the sum of twenty eight hundred and seventy five dollars in hand paid and secured to be paid as follows to wit: one thousand dollars to the said Blanton in thirty days from this date and hundred dollars to be paid to the said Blanton on the first day of November 1892, and the remaining seventy five dollars to the said David S. Ely in hand paid which referred payments are evidenced by notes this day executed by the said Susan A. Mize to the said Blanton the receipt of which is hereby acknowledged the said party of the first part, do by these presents give, grant bargain, sell and convey unto the said Susan A. Mize during her natural life and after her death, to the said heirs of Josse S. Mize dead, to be equally divided between them (except Mary Barlow wife of James Barlow and Alice West wife of John West.

who have each had one hundred dollars advanced to them out of the said Miss's estate. With covenants of General warranty a certain tract or parcel of land lying and being in Lee County Virginia, and on the main road about eight miles west of Jonesville and bounded as follows to wit: Beginning at a red oak in a field corner to D. B. Wades land and with lines thereof S $2\frac{3}{4}$ ° W $16\frac{1}{4}$ poles to a double chestnut S $63\frac{1}{2}$ ° W $106\frac{1}{2}$ poles to a stake on the original west line and with same N $\frac{3}{4}$ ° W 121 poles to a stake in the Ponnells Valley road and with same S $89\frac{1}{2}$ ° E $17\frac{1}{2}$ poles N 58 ° 9' E $16\frac{3}{4}$ poles, thence leaving said road N 6 ° W $24\frac{7}{10}$ poles to Arthur Ely's line and with same N $64\frac{3}{4}$ ° E 224 poles, thence with Charles Blankenships lands S 8 ° 40' E $175\frac{1}{2}$ poles to a stake in the aforesaid road and with same S 73 ° W $26\frac{5}{100}$ poles S 82 ° W $20\frac{5}{100}$ poles to a rock Wades corner and with his lines and road N 50 ° W 40 poles N 34 ° W $17\frac{8}{100}$ poles N 47 ° W $16\frac{1}{4}$ poles S 48 ° W $44\frac{3}{4}$ poles to the beginning containing 204 Acres by actual survey and the parties of the first part covenant to and with the parties of the second

part. That they have good right and title to said land and the said Blanton wife bind themselves to deliver to Susan A. Mice full possession of said land November 1st 1892 and the said Ely binds himself to deliver to said Susan A. Mice full possession of his interest on the 1st day of September 1892 and that they will pay off and satisfy the vendors lien retained on said land by B. F. Kneaird for purchase money due him on said land before the deferred payments herein specified become due. But it is understood that a vendors lien is hereby retained on the land hereby conveyed until the purchase money is fully paid. Witness the following signatures and seals the day and year first above written. It is further understood that Wm Davis is to have his contract on lease as to ten acres of land now cleared but not to clear any more land under said lease entered into before signing.

J. F. Blanton Seal

Ordellia B. ^{her} _{attok} Blanton Seal

D. S. Ely Seal

Virginia Lee County to wit:

J. John R. Gibson clerk of the county

court for the County aforesaid in the State of Virginia do certify that J. F. Blanton and Orelia B. Blanton his wife whose names are signed to the writing above bearing date on the 2nd day of April 1892. have acknowledged the same before me in my County aforesaid and said deed is admitted to record. Given under my hand this 2nd day of April 1892.

John R. Gibson clerk.
Virginia Lee County to wit:

I, John R. Gibson Clerk of the County Court for the County aforesaid in the State of Virginia. do certify that D. S. Ely whose name is signed to the writing above bearing date on the 2nd day of April 1892. has acknowledged the same before me in my County aforesaid and said deed is (admitted to record. Given under my hand this 4th day of April 1892).

John R. Gibson Clerk
Attest: John J. R. Gibson Secy

In witness where
Thos J. Blanton
D. S. Ely
Deed Book 1027
P. 483

44

KNOW ALL MEN BY THESE PRESENTS, That we

Susan A. Ely
D. S. Ely, G. W. Blankenship & C. E. Blankenship
are held and firmly bound unto the Commonwealth of Virginia, in the sum of

Five Hundred

dollars, to the payment whereof, well and truly

to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond, or by virtue of said office or trust, in any currency, funds, counter claims or offsets other than legal-tender currency of United States. Sealed with our seals, and dated

15th day of *May*, one thousand eight hundred and *Ninety three*

The Condition of The Above Obligation is Such, That whereas the above bound

on

Susan A. Ely
her bill in Chancery against *C. E. Flannery*
Amour et al

addressed to the Judge of the circuit court of the county of Lee, has obtained from the said Judge an injunction to injoin and restrain

the said Flannery
as such Amour from all the
mentioned in the Bill

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until

she, or some one for *her*, shall enter into a bond, with good security, in the clerk's of of the said court, payable to the Commonwealth of Virginia, in the penalty of *Five Hundred*

Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said *Susan A. Ely* shall pay all such costs as may be awarded against *her*, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, or else to remain in full force and virtue.

Executed in the presence of

Rest J. A. G. Hyatt

Susan A. Ely (SEAL)
J. S. Ely (SEAL)
G. W. Blankenship (SEAL)
C. E. Blankenship Jr (SEAL)

In the Clerk's Office of the Circuit Court of the County of Lee

This day personally appeared before me J. A. G. Hyatt, clerk of the circuit court of the county of Lee

and made oath that estate, after the payment of all just debts, and those for which he bound as security for others and expect to pay, worth the sum of dollars.

and above exemptions allowed by law.

under my hand this day of

18

Clerk.

2

Susan A. Ely

vs.

Bring for defendant.

C.E. Flanary, Admr., &c.

This is a bill of injunction seeking to prohibit the administration of the estate of Jesse S. Mise, deceased. The complainant, Susan A. Ely, the late widow of the said Mise, insists that the estate of the said Mise, her late husband, is not subject to distribution because her said husband made to her a mortis causa gift covering the whole of his personal estate. In her bill she recites that her husband sold his farm in the state of Tennessee, deposited the proceeds of about \$3300 in a bank in her name, and "showed" her the passbook, telling her that he had made her a gift of the same in view of approaching death. As will be seen by the answer, no question is here raised as to the validity of the gift of said money put in bank to her credit. But the complainant in her bill further claims that her said husband, on his return from the bank, and while he was yet going about transacting his ordinary business, made in addition to the said money so deposited as ^{a gift, in view of death} aforesaid, the whole of his personal estate. The question here raised is as to the validity of the claim to any personal estate which the said Mise owned at his death, or at the time of the alleged gift, other than said money in bank so deposited, which it appears, consisted in horses, mules, &c.

It is respectfully submitted that the injunction ought to be dissolved, because:

1st. Gifts causa mortis are not favored by the courts, and are required to be strictly proved.

3 Pomeroy Eq. Juris. p. 84, sec. 1146, 3 Lawson Rig. Rem. p. 2416, s. 1332.

2nd. "A gift causa mortis, or in expectation of death, is a gift made by a person in sickness who, apprehending his dissolution near, delivers or causes to be delivered to another the possession of any personal goods to keep as his own in case of the donor's decease." And the same authority, Amer. Eng. Enc. Law, vol. 8, p. 1342 (n. 1st. col.), says, "Three things are necessary to a gift causa mortis. 1st. It must be in view of the donor's death. 2nd. The donor must die of the peril. 3rd. There must be a delivery."

It is submitted that the evidence adduced by the plaintiff fails to show a gift inter vivos, and a-fortiori a causa mortis, in especially the 2nd. and 3rd. of these requisites.

Of the delivery:

3rd. Delivery is absolutely necessary to either a gift inter vivos or a donatio mortis causa. "Delivery stands in the place of nuncupation and must accompany and form part of the gift". It must be an actual delivery of the thing itself.

Milller et ux. v. Jeffress, 4 Grat. 472, (480.), Lawson Rig. Rem. sec. 1329, 3 Pomeroy Ed. Jur., sec. 1149.

To constitute a delivery it is essential that the giver should part with his control over the chattel; and where his intention is to vest a future interest, though he may go through the form of delivering the chattel, yet in as much as he retains his control over it there is no delivery".

3 Lawson Rig. Rem. sec. 1329, sec. 1335.

It is submitted that at no time did the said Mise ever part with the control of his property. (See depo. of def. that of L.M. Mise, p. 26, Con. Rutledge, p. 4 & 5, F.M. McConnell, p. 2., and the others for def.)

4th. It is essentially necessary to the validity of a donatio causa mortis that the claimant should prove affirmatively that the donor died of the same immediate sickness or peril. If after the time of the alleged gift he recovered sufficiently to transact his business, to control and does control his goods and property, it is a revocation of the gift.

3 Pomeroy sec. 1150.

The defendant asserts that the claimant failed to make out her case according to this rule, and on the contrary claims that said Mise took and kept the possession of all his property, (except of course the money about which no question is raised) down to the day of his death.

5th. A donation mortis causa is absolute only on donor's death. *Basket v. Hassell*, 107 U.S. 602.

If after a declaration by J.S. Mise that he would give his wife, Susan, the whole of his personal estate, he resumed possession of all or any part of the same this is a revocation of the gift.

3 Lawson Right. Rem. sec. 1333, 1 Smith Lead. Cas. 983, 25 Am. Dec. 378.

That the said Mise had possession of his horses, cattle and mules and other property of a like kind, to the hour of his death, we are told by F.M. McConnell who was to see him in his last illness every day. vide his depo. p. 1 of deft. side.

So are we told the same by Con. Rutledge who was furnished a horse, one that it is claimed was given away^a, by the said Mise according to contract with which to do his farming, and one which Mise said was his, and one which witness never heard claimed by said Ely, though witness lived in the same yard, and over which witness tells us that said Susan A. Ely never exercised any control. These are corroborated by each of the daughters who had lived near their father, and also by the brother of the deceased, L. M. Mise, who was intimately acquainted with the affairs of his brother, and with whom he lived. See his depo. p. 25.

6th. The grounds assigned in the bill for the said Mise's action in this alleged gift have failed entirely of support; and not only failed of proof, but are entirely contradicted by the evidence of the defence. (Vide depo. L. M. Mise, p. 25, and of Alice West, Mary Barlow, Ella V. Mise, Margaret F. Whitehead, and Martha D. Mise. Each of these contradict the allegation that the said Susan helped her said husband to discharge his indebtedness, which indebtedness we are told by L. M. Mise (p. 25) was very small at time of the marriage with said Susan, and which was paid by the husband himself shortly after the marriage. Each of the daughters tells us that she^(Susan A. Ely) never helped to support the family, nor do any thing more than the instincts of a womanly woman would prompt.

7th. But this is not all. It is insisted that this alleged disposition of property by J. S. Mise was made to enable the said complainant to bring up and care for the infant children. Having purchased from the money banked to her by her deceased husband a large and productive farm (see deed marked "A"), the absolute use of which she enjoys during her lifetime, what do we find her doing? acting in conformity to what she would have us believe was the wish of her deceased husband? Are the infant children housed and cared for? Vide depo. Ella Mise, p. 23, and Martha D. Mise, p. 29, (of deft. side.) No. She has inhumanly driven two of her deceased husband's infant children from her roof; she has thrust them out into a cold and cheerless world, homeless, motherless, fatherless, while the estate of their father is being wasted and devoured by strangers. (See depo. Mary Barlow, p. 16.)

8th. That this is not a gift inter vivos it seems to us is conclusive

from the reading of the statute, sec. 2414 of the Code. No attempt is ~~made~~ made by the claimant to set up possession any where, and especially does she not attempt to show possession at an other place than the residence of herself and her husband.

9th. It is submitted that the complainant, Susan A. Ely, is not a competent witness in this case for any purpose.

Code sec. 3346, (First), 31 Grat. (70) 76. *Greenleaf Ev. § 334, § 337, v*

§ 343- *2 Kent Comm. - 178-*

"At common law husband and wife are incompetent to testify for or against each other; and this rule is not altered by the statute removing incompetency by reason of interest." 76 Va., (225) 227. We cannot conceive that the death of the said Mise would make his wife a witness to a transaction in which he in his lifetime was an interested party. The wife is incompetent to testify to any thing which the husband did or did not do in his lifetime. 76 Va., 759, 765. In 25 W. Va. we have a case directly in point. "A widow files her bill as administratrix of her deceased husband, claiming as her own certain bonds, which she avers were given to her by her intestate husband, before and in consideration of marriage. Held: 1. That she is an incompetent witness to prove the gift or delivery of said bonds. 2. To sustain such a gift it must be shown by clear, unequivocal and convincing proof that the donor delivered the bonds or property to the donee with an intention to part absolutely with the title and possession of it. *Martain v. Smith*, 25 W. Va., 8 Am. Eng. Enc. Law, p. 1333, note, sec. col.

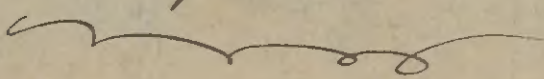
10th. As to the depositions of S. S. Rose, Martha Vanbeebber, Geo. W. Vanbeebber, taken by the complainant in the state of Tennessee: they can not and do not effect this case, as they at most only indicate an expressed intention on the part of the said J. S. Mise to make to his wife a gift, which is unavailing. 3 Lawson Rich. Rem, sec. 1327, 89 Am. Dec. 195.

11th. As to the question raised as to incompetency of the daughters of the deceased because they are the heirs and distributees, we think it unnecessary to more than refer to the Code, sec. 3345.

12th. As to the deposition of W. P. Drvden, taken for complainant in Va., we only have an expressed intention, which intention evidently was changed before the death of the said Mise. See p. 12, of plt. side. *3 Low. R. R. § 327.*

The deposition of H. J. Morgan ought not to be considered because

it is irrelevant wholly, not touching the issue joined.

E. W. R. Ewing for
defendant.


Brief for
pendant.

The Commonwealth of Virginia.

To The Sheriff of Lee County Greeting:

WE COMMAND YOU TO SUMMON..... *Chas. C. Flanagan Admr.*
.....
..... *of Jesse S. Miss deed,*
.....
.....
.....
.....

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in..... *third*
..... *June*next, being rule day to answer a bill in Chancery exhibited in our said Court against
..... *him* by..... *Susan A. Ely*
.....
.....

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This..... *18th*day of..... *May*18.....*93*....., in the 11^{*7*} year of the Commonwealth,

J. A. G. HyattClerk.

A Copy Teste..... Clerk.

The bond required by injunction order
having been given & filed, the defendant
is enjoined from selling the property
specified in the Bill until the
future orders of the Court
Date J. A. S. Depart

J. B. & Carr

Susan Ely

3 Spain
203 Choy

C. E. Flanagan

To 2nd June Rules 1893.

I accept legal
notice of this Spa
May 18th 1893.

C. E. Flanagan